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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

Maurice H. Sochia & Beatrice M. Sochia
Petitioners
versus
United States of America
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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59 pp

I

QUESTION PRESENTED FOR REVIEW

THERE ARE CURRENTLY WITHIN THE FEDERAL-REPUBLIC TWO "INCOME TAX SYSTEMS." THESE "INCOME TAX SYSTEMS" ARE IDENTIFIED AS FOLLOWS:

A. THE "INCOME TAX SYSTEM" MANUFACTURED BY THE CONGRESSIONAL BRANCH OF THE CENTRAL GOVERNMENT FOR THE FEDERAL-REPUBLIC, WHICH "INCOME TAX SYSTEM" HAS BEEN APPROVED BY THE UNITED STATES SUPREME COURT AND IS IDENTIFIED AS A "VOLUNTARY, NON-COMPULSORY, INDIRECT, PRIVILEGE, EXCISE TAX ON INCOMES, WHICH IS SUBJECT TO THE CONSTITUTIONAL RULE OF UNIFORMITY."

B. THE "INCOME TAX SYSTEM" MANUFACTURED BY THE EXECUTIVE BRANCH OF THE CENTRAL GOVERNMENT FOR THE FEDERAL-REPUBLIC, WHICH "INCOME TAX SYSTEM" IS APPROVED BY THE LOWER COURTS IN THE CENTRAL GOVERNMENT'S FEDERAL JUDICIAL SYSTEM AND IS IDENTIFIED AS A "COMPULSORY, NON-VOLUNTARY, DIRECT, TAX ON INCOMES, WHICH IS NOT SUBJECT TO THE CONSTITUTIONAL RULE OF APPORTIONMENT.

WHICH "INCOME TAX SYSTEM; ARE THE TAXPAYERS OF THIS NATION REQUIRED TO OBSERVE IN ORDER TO BE LAW-ABIDING, THE "CONGRESSIONAL, VOLUNTARY, INCOME TAX SYSTEM," OR THE "EXECUTIVE, COMPULSORY, INCOME TAX SYSTEM?"

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IN THE

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OCTOBER TERM 1992

MAURICE H. SOCHIA & BEATRICE M. SOCHIA
PETITIONERS,

VS.

UNITED STATES OF AMERICA
RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT COURT

Petitioners, Maurice H. Sochia and Beatrice M Sochia, respectfully pray that a writ of certiorari issued to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled cause on June 24, 1994, with a denial of petitioners' motion for reconsideration entered on August 3, 1994.

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit is attached herewith and is identified as Appendix A. The denial of petitioners' motion for consideration by the Fifth Circuit Court of Appeals is attached herewith and is identified as Appendix B. The United States Tax Court's, "Order of Dismissal and Decision," dated, October 12, 1993, is attached herewith and is identified as Appendix C. The United States District Court For The Western District, San Antonio Division "Order," dated, October 27, 1993 is attached herewith and is identified as Appendix D.

JURISDICTION OF THIS COURT

The Petitioners, this day, makes this request for judicial discretion to be exercised by the Court over the matters raised by this "Writ of Certiorari."

Petitioners believe that their request for judicial discretion to be exercised by the Court in the matters raised in their "Writ of Certorari" are extremely special, are extremely important, and are extremely compelling reasons for the Court to agree to review.

The matters to be reviewed by the Court which are being requested by the Petitioners will involve, among other things, Rule

10(c), Rules of Supreme Court, which reads in pertinent part as follows:

". . . a United States court of appeals has . . .decided a federal question in a way that conflicts with applicable decisions of this Court."

The jurisdiction of this Court is found under 28 U.S.C. 1254 (1) in the matters raised by this plea for Writ of Certiorari.

STATEMENT OF THE CASE

Two questions are presented to the Court for resolution by the Petitioners. They are as follows:

(1) The fundamental, primary question is whether or not the assertion and invokement of the Petitioner's "unalienable rights," as contained at the Fifth Amendment within the Constitution of the United States, on Form 1040 for tax year 1989 was legally proper and correct; and

(2) the secondary question, consist of determining "legally" what the Petitioner's tax liability is for tax year 1989 under the laws that taxes incomes as enacted by the Congress of the Central Government for the Federal-Republic of the Fifty, Independent, Sovereign, United, States.

As the matters raised by Petitioners and the Respondent traveled through the Judicial process to this point in time, two opposing positions emerged pertaining to the law that taxes incomes. These opposing positions, which involved the overall, basic scheme, design, and purpose of the law that taxes incomes, and which further, would serve as the fundamental tenet for resolution of the two questions presented to the Court cited above

are submitted to the Court for settlement. The Petitioners subscribe to one of these opposing positions and the Respondent subscribes to the other position.

The presumption, assumption and supposition of the Petitioners in regards to the law that taxes incomes which should be used in the resolution of the two questions presented to the Court for final settlement is as follows: that the system of taxation which is identified as a "Voluntary, Non-Compulsory, Indirect, Privileged, Excise, Income Tax System, which is subject to the Constitutional Rule of Uniformity, as authorized and contained within the Constitution of the United States; as contained within and provided by the statutes found at Title 26 of the Internal Revenue Code, which Code has been enacted by the Congress of the Central Government for the Federal-Republic of the Fifty, Independent, Sovereign, United, States; and as contained within and provided by the rulings, findings, judgments, orders, decisions, and interpretations of the United States Supreme Court in the last eighty years or more, is the correct, proper, and appropriate income tax system which the taxpayers of the Nation are legally bound to comply with. **(Hereinafter, this Income Tax System will be referred to as the Congressional Plan or "C-Plan.")**

The presumption, assumption and supposition of the Respondent's in regards to the law that taxes incomes which should be used in the resolution of the two questions presented to the Court for final settlement is as follows: that the system of taxation which is identified as a "Compulsory, Non-Voluntary, Direct, Income Tax System, which is not subjected to the Constitutional Rule of Apportionment," as contained within and provided by the Rules and Regulations of the Internal Revenue Service; as contained within and provided by the numerous publications of the Internal Revenue Service; and as contained within and provided by the rulings, findings, judgments, orders, and decisions of the lower courts within the Federal Judiciary System, is the appropriate,

proper, and correct income tax system. **(Hereinafter, this Income Tax System will be referred to as the Internal Revenue Service's Plan or "I.R.S.-Plan.")**

Of course, Petitioners' knowledge and belief concerning the law that taxes incomes clashes with the position of the Respondent. Obviously, either Petitioners are wrong or Respondent is wrong.

This becomes the task of the Supreme Court in this case, to determine once and for all time in behalf of all the taxpayers of this Nation, which income tax system are the taxpayers of this Nation subjected to: a "Voluntary, Non-Compulsory, Indirect, Privileged, Excise, Income Tax System which is subject to the Constitutional rule of Uniformity," or a "Compulsory, Non-Voluntary, Direct, Income Tax System which is not subject to the Constitutional Rule of Apportionment?"

ARGUMENTS

The "C-Plan" rests upon the following evidence:

Article I, Section 1, provides as follows:

> "Congress shall make all laws. . . ."

Article I, Section 2, Clause 3, in relevant part provides as follows:

> "Representative and direct taxes shall be apportioned among the several states which may be included within this Union, according to their numbers. . . ."

Article I, Section 8, Clause I, in relevant part provides as follows:

"The Congress shall have the power to lay and collect taxes, duties, imposts and excises. . .but all duties, imposts and excises shall be uniform throughout the United States. . . ."

Article I, Section 9, Clause 4, provides as follows:

"No capitation, or other direct tax shall be laid unless in proportion to the census or enumerations herein directed to be taken."

Constitutional Amendment Number Sixteen provides as follows:

"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

The tax imposed on "incomes," as enacted by the Congress of the Central Government for the Federal-Republic for the Fifty, Independent, Sovereign, United, States, **(Hereinafter referred to as the Congress)** according to the rulings, findings, interpretations, and decisions of the United States Supreme Court, is an "indirect, excise, tax." **(Brushaber vs. Union Pacific,** 240 U.S. 1, (1916).)

The "Indirect, Excise Tax on Incomes," as enacted by the Congress, is a "Voluntary Tax."**(Flora vs. United States,** 362 U.S. 145, 176, (1960).)

An "Excise Tax" is a "Privilege Tax."**(American Airways vs. Wallace,** 57 F.2d., 877, 880,(1932).)

The word "income" in the law that taxes incomes, as enacted by the Congress, means profit, gain. "Income" equals profit, gain. **(Eisner vs. Macomber,** 252 U.S. 189, (1920);

Merchant's Loan and Trust Company vs. Smietanka, 255 U.S. 509, 518, 519, (1921); **Bowers vs. Kerbaugh-Empire Company,** 271 U. S. 174 (1926).)

It is therefore, proper and correct for the Central Government to offer, to those in their "Legislative Jurisdiction," the "privilege" of allowing individual taxpayers to earn income, profit, gain; in exchange for which an "excise," a "cut," is demanded by the Central Government from that income, profit, gain realized by the taxpayer.(**Sims vs. Ahrems,** 271 Southwest 720, 730, (1925).)

Those taxpayers that are within the "Legislative Jurisdiction" of the Central Government and choose to take advantage of the "privilege" offered to them by the Congress of the Central Government of earning income, profit, gain, have a moral obligation to file a Form 1040 for the purpose of paying the "excise" that is due on the income, profit, gain, realized by the taxpayer when he voluntarily decided to take advantage of the Central Government's "privilege." "Our system of taxation is based upon voluntary assessment and payment, not upon distraint."(**Flora vs. United States,** 362, U. S. 176 (1960).

Those taxpayers who are within the "Legislative Jurisdiction" of the Central Government and do not take advantage of the opportunity offered to them by the Central Government to earn income, profit, gain, either because they could not take advantage of the opportunity or because they could take advantage but choose not to do so, do not have either a moral or legal obligation to file a report, a Form 1040.(**Flora vs. United States,** 362 U.S. 145, 176 (1960).

The decision to choose to enter into a contractual arrangement with the Central Government under the "C-Plan," is always with the taxpayer who is within the "Legislative Jurisdiction" of the Central Government.

The decision by the taxpayer to enter into a contractual arrangement with the Central Government is noted by the Central Government when the individual "voluntarily" prepares, processes, and files a Form l040 within which the taxpayer self-assesses. By this "voluntary act," the taxpayer becomes legally liable for the "Excise Tax on Incomes." as enacted by the Congress of the Central Government. By this "voluntary act," the taxpayer is saying, " I took advantage of the 'privilege' offered to me by the Central Government and here is the Central Government's 'excise,' 'cut,' for taking advantage of the 'privilege.' "

Until the taxpayer voluntarily decides to self- assess and enter into a contract with the Central Government no tax is levied, no tax is imposed, or no tax is even implied by the "C-Plan." In short, there is no tax liability under the "C-Plan," which has been established by the Central Government.

Without an "Original Assessment," which is what the taxpayer does when he prepares, processes, and files Form l040 voluntarily, no contract is manufactured between the parties, therefore, no tax monies are legally due and payable by the taxpayer to the Central Government. (26 U.S.C. 620l).

Once an "Original Assessment," is manufactured by the taxpayer, and the taxpayer indicates that he is under contract with the Central Government for taking advantage of the "privilege" offered, a "Supplemental Assessment" may be made by the Central Government, based on the fact that the "Original Assessment" manufactured by the taxpayer was somehow "deficient" in the amount of the "excise" due to the Central Government. (26 U.S.C. 6204).

No "voluntary self-assessment," which is the "original assessment," by the taxpayer means no "supplementary assessment"

can be manufactured or even authorized to be manufactured by the Central Government.(26 U.S.C. 6204; **Flora vs. United States,** 362 U.S. 176 (1960).)

The final act by the taxpayer, after he self-assess and determines the taxpayer's "excise" owed to the Central Government, is signing the Jurat. By law the self-assessment of individual income taxes is made by willfully executing the prescribed jurat of a completed Form 1040 which declares and affirms the information thereon is based upon the knowledge and belief of the person or persons signing it. Clearly, if an individual does not possess the "knowledge and belief" proscribed by the form and its jurat, he or she is estopped or barred by 26 U.S.C. 7206 from willfully signing it. The signing of any document under penalties of perjury must be and is, by definition. a willful act in which coercion can play no part. The word "willful" means: "Proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass; designed; intentional; purposeful; not accidental or involuntary." A penalty may be imposed only by statute for the violation of a statutory requirement. There simply is no statute that requires the affiants to make a valid tax return. (**Baca vs. C.I.R.,** 326 F. 2d., 189 (5th Cir., 1964).)

The Respondent's Publication 21 states in its introduction: "The Internal Revenue Service relies on all taxpayers to know their responsibilities and to meet them. This is our system of voluntary compliance." It is abundantly clear that the self-assessment of income taxes, by making a Form 1040 return under penalties of perjury, is a voluntary act because the signing of any affidavit, statement or document under the penalties of perjury is defined by law as a willful act. **Bothke vs. Fluor,** 713 F. 2d., 1405 (9th Cir. 1983).)

On April 8, 1990, for good and lawful reason, the Petitioners asserted and invoked their "Fifth Amendment Rights," on Form 1040 for tax year 1989.

The Petitioners' "State of Minds," on April 8, 1990 were such that they knew they could not comply with the "C-Plan," because they had never seen a copy of the Congressional law that taxes incomes. Until a familiarity with the law that taxes incomes was obtained and understood, Petitioners felt they could not proceed and "Voluntarily, Self-Assess," even though they had done this previously for thirty-five years or more. The reason for drawing the line at this time, April 8, 1990, was because Petitioners had been audited by the Respondent for tax years 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1985, 1986, 1987, 1988. It was apparent to Petitioners that they were doing something wrong and they wanted to find out for themselves what it was so that they could correct their behavior and conduct.

Subsequently, the Petitioners did obtain a copy of the law that taxes incomes, as enacted by the Congress. After very careful review of that law, and all the case law that pertained to that law, it was apparent to Petitioners that previous to tax year 1989, the Petitioners had been filing their Form 1040 incorrectly and not in accordance to the "C-Plan." Petitioners felt vindicated in their assertion and invokement of their "Fifth Amendment Rights" for tax year 1989, in the light of the discovery that they were not complying with the law that taxes incomes properly because of just plain ignorance.

However, while the Petitioners were in the process of becoming acquainted with the law that taxes incomes, as enacted by the Congress, the Respondent was doing everything in its power to coerce the Petitioners into preparing, processing, and filing a Form 1040 in accordance to the "I.R.S.-Plan," which was not in

accordance to the law that taxes incomes, as enacted by the Congress.

Two examples, among many, will serve to show to the Court the differences between the position of the Petitioners and the position of the Respondent in regards to the law that taxes incomes.

EXAMPLE NUMBER ONE

On April 17, 1990, the Petitioners received a letter from the Respondent. In the letter from the Respondent, in the first paragraph, it was alleged that the Petitioners "Fifth Amendment Return" was not acceptable as an individual income tax return.

Petitioners agree with Respondent. A "Fifth Amendment Return" is not an individual income tax return and should not be regarded as such. A "Fifth Amendment Return" is a temporary expedient, it is an interim report, it serves in lieu of a required report until the good, and lawful, reasons and causes, are addressed which prompted a "Fifth Amendment Return," to be prepared, processed, and filed in the first place by a taxpayer. Once the good, and lawful, reasons and causes, for filing a "Fifth Amendment Return" are addressed, then a final, legal tax-return is filed, if necessary, in accordance to law containing the individual's "voluntary self-assessment" for the tax year in question.

Then Respondent, in his letter, dated, April 17, 1990, which was sent to Petitioners, stated in the first paragraph, that a "Fifth Amendment Return" does not contain the information required under Title 26 of the Internal Revenue Code.

Petitioners disagree with Respondent and take issue. Respondent alleges that Title 26 requires the taxpayer to give to the Respondent information. This is false doctrine. The law that taxes incomes requires nothing from the taxpayer simply because

the overall scheme, design, and purpose of the 'C-Plan" is "Voluntary." In such a system, the taxpayer is not **required,** by the law to do anything unless he takes advantage of the "privilege" offered by the Central Government, and proceeds on that basis, to "Voluntarily Self-Assess" and arrive at the amount owed, which is the "excise," the "cut," which sum is due and payable to the Central Government by the taxpayer who took advantage of the Central Government's "privilege."

The Respondent alleged further in paragraph one within his letter, dated, April 17, 1990, that the Petitioners did not give to the Respondent the information required by Title 26 of the Internal Revenue Code. By this statement, the Respondent ,was stating that the taxpayer was commanderred, commanded, ordered, by Title 26 of the Internal Revenue Code, to give to the Respondent the information the Respondent stated was required This position of the Respondent clearly shows that the Respondent believed that the law that taxes incomes compels the taxpayer to respond as the Respondent dictates because the income tax system the Respondent is subscribing to is the compulsory, "I.R.S.-Plan."

It is evident that, if what the Respondent believes is the law that taxes incomes, which is the compulsory, "I.R.S.-Plan," the Congress would not, could not have enacted into law the kind of law the Respondent is allegedly stating and enforcing in this letter of April 17, 1990, which taxes incomes, because the United States Constitution would have prohibited the Congress from doing so, and further, the United States Supreme Court would have declared such an act unconstitutional. The act supported and enforced by the Respondent would have had to have been enacted into law by another entity on its own authority, making that entity an abrogating, usurpituous entity.

That abrogating, usurpituous entity had to be, and was, the Respondent; it was the Respondent that manufactured the law,

under its own authority, which was referred to in the Respondents letter on April 17, 1990 to Petitioners and is identified as the compulsory, "I.R.S.-Plan" By regarding the law as a "Compulsory, Non-Voluntary, Direct, Income Tax System that does not need to be Apportioned," the Respondent would then be in the position of **requiring** taxpayers to **comply** with the provisions of Title 26.

It was to be noted in the preceding paragraph that the Congress lacked the Constitutional authority, the power, to enact into law a "Compulsory, Non-Voluntary, Direct Income Tax System, which was not subject to the Constitutional Rule of Apportionment, but that didn't bother the Respondent; the Respondent simply took the place of the Congress, and sought no Constitutional authority, since this was going to be done by the Respondent's own authority, and proceeded, as a dictator would in similar circumstances, to enact into law a "Compulsory, Non-Voluntary, Direct, Income Tax System that did not require the Constitutional rule of Apportionment. Of course, now, the Respondent would need to go head to head with the United States Supreme Court, since this action and act taken by the Respondent was a clear violation of the Constitution of the United States but that didn't seem to bother the Respondent.

Furthermore, a "Fifth Amendment Return" cannot contain the information required under Title 26 of the Internal Revenue Code of the Congress because the purpose of a "Fifth Amendment Return" is to deny any information to anyone until the good, and lawful, reasons and causes for asserting same are known and addressed. In addition, in this case, no information can be given to Respondent that is **required** by Title 26 of the Internal Revenue Code by the Petitioners simply because in Title 26 no information is required to be given.

Lastly, how could Petitioners respond to the demands of the Respondent when they publicly and openly declared and stated to

the Respondent that did not understand, nor could they comprehend, nor could they apply, the law that taxes incomes to their situation and condition at that time. Petitioners on April 8, 1990 were barren of information, concerning the law that taxes incomes, and were still struggling to get a handle on the law that taxes incomes, as enacted by the Congress, on that date.

The Respondent stated further in his letter, dated April 17, 1990, that a "Fifth Amendment Return" does not comply with the Income Tax Regulations.

Since a "Fifth Amendment Return" does comply with the provisions of the "C-Plan," and since further, the Rules contained in the Internal Revenue Manual, even if codified in the code of Federal Regulations, do not have the force and effect of law, (**United States vs. Horne, C. A.,** 714 F. 2d., 206, (1983); and still further, the power to promulgate regulations does not include the power to broaden or narrow the meaning of statutory provisions beyond what Congress intended, (**Abbot, Procter & Paine, vs. United States,** 344 F. 2d., 333, (1965); and finally, regulations cannot do what Congress itself is without power to do; they must conform to the United States Constitution; (**C.I.R. vs. Van Vorst, C.C.A.,** 59 F.2d., 677 (1932); there can be no Income Tax Regulations that the Petitioners are forced to comply with.

The Respondent's letter, dated, April 17, 1990, went on to say that Petitioners failure to **comply** would subject the Petitioners to interest and civil penalties as well as prosecution under Internal Revenue Code, 26 U.S.C. 7203. This statement by Respondent more than any other on that letter, dated, April 17, 1990, clearly places the Respondent at odds with the law that taxes incomes as enacted by the Congress of the Central Government for the Federal-Republic.

Since there are no statutes in Title 26 that **require compliance** by the Petitioners, what statutes was the Respondent referring to? Since no such statutes are found in Title 26, Internal Revenue Code, as enacted by the Congress, the statutes the Respondent must have been referring to are those that the Respondent manufactured under his own authority, which of course is identified as the compulsory "I.R.S.-Plan."

Because the Respondent views the tax system as the compulsory "I.R.S. Plan," the letter of the Respondent, dated, April 17, 1990 went on to say in the second paragraph that there was a legal requirement for filing a U. S. Individual Income Tax Return and it was alleged by Respondent, that the Respondent had the legal right to demand that a Return be filed by Petitioners because of what was indicated on the enclosed Notice No. 555.

Analysis of Notice 555, (Rev. 4-84) reveals that Respondent cited 26 U.S.C. 6011 as one of the statutes that gave the Respondent the right to assert that there was a legal requirement for individual taxpayers to file a U.S. Individual Income Tax Return. Twenty-Six U.S.C. 6011 is titled, "General Requirement of Return, Statement, or List." and it reads as follows:

"(a) General rule:

"When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations."

Among the observations to be made about 26 U.S.C. 6011 is that the Internal Revenue Code does not establish an "income tax liability, " therefore, since all mandatory and enforcement provisions of the Code relate to a specific "liability," established for a specific excise, none of these mandatory or enforcement

apply to the excise on income. Clearly the "C-Plan" did not require anyone to file an individual income tax return.

It is only when you are liable for a tax that you need worry about the laws that pertain to it. If you are not liable, you can ignore all laws related to a tax law, since they would not apply to you. The fact that no person is made liable by the Congress of the Central Government in Title 26 for the payment of income taxes; so 26 U.S.C. 60ll does not apply, unless under distraint, to Petitioners, or any taxpayer, involved in the payment of income taxes. Twenty-six U.S.C. 60ll does apply to other taxes that are found in the Internal Revenue Code, such as the excise on tobacco products at 26 U.S.C.4374, and 26 U.S.C. 5703, where the provisions of the law require specific performance because liability is established by law. The Respondent has over and over again cited code sections, to enforce payment of income taxes, under distraint, when analysis reveals that the code sections cited by Respondent pertain to other mandatory Central Government's excise taxes, such as those imposed on insurance, alcohol, tobacco, and etc..

Each and every enforcement provision of the Code is made contingent upon the taxpayer being made "liable" by the Congress for the tax in question. Under the "C-Plan," once again, no one is made "liable" for the excise tax on incomes by the Central Government because the "C-Plan" is a "voluntary" tax system.

Before a taxpayer could become legally "liable," under the "C-Plan," the taxpayer would need to make the decision of whether or not to take advantage of the "privilege of earning income;" which "privilege" was offered to the taxpayer by the Central Government. Further, after the taxpayer decided to take advantage of the "privilege" offered by the Central Government, the taxpayer would then need to proceed to voluntarily self-assess for the purpose of determining the tax liability he claims he owes to the Central Government, for taking advantage of the "privilege,; and

finally the taxpayer would need to pay the "excise," the "cut," the amount owed to the Central Government for taking advantage of the privilege of earning income.

The "income tax liability" is determined by the taxpayer, not by the Central Government, on Form 1040 because of the Jurat, which offers. further proof that no "liability" is established in the law that taxes incomes by the Congress of the Central Government for the Federal-Republic. .When the taxpayer prepares, processes, and files a Form 1040 with the Jurat signed, the taxpayer has placed the Central Government on notice that the taxpayer voluntarily took advantage of the privilege of earning income" offered by the Central Government and the taxpayer has calculated, based on his voluntary self-assessment, that the taxpayer owes an" excise," a "cut"of the income realized by taking advantage of the privilege offered and that sum becomes the taxpayer's "liability" and such sum is now due and payable to the Central Government.

Twenty-six U.S.C. 6011 only applies when "persons are required," to make "returns or statements," as is imposed by the Congress of the Central Government at 26 U.S.C. 4374 and 26 U.S.C. 5703, but not at 26 U.S.C. 1,Sub-Title A. Petitioners, who have not served notice on the Central Government that they have taken advantage of the "privilege" offered by the Congress are among those persons who are not required to make a return or statement to pay the excise on income demanded by the Congress because Petitioners did not take advantage of the privilege offered by the Congress to earn income; 26 U.S.C. 6011 does not apply to Petitioners.

Respondent by citing 26 U.S.C. 6011 is saying that Petitioners are "Persons Liable" and therefore Petitioners must manufacture a "return." Of course once again Respondent is basing its presumption, assumption, and supposition on the fact that what the Respondent manufactured , which is identified as the

compulsory,"I.R.S.-Plan," is the Income Tax System that all taxpayers are subjected to in this Nation at this time.

Section 6011 did say further that pursuant to certain "regulations prescribed by the Secretary. . . ." None of the prescribed regulations by the Secretary are cited which specifically apply to the law that taxes incomes. So, where are these regulations prescribed by the Secretary to be found and to what do the regulations of the Secretary apply? It is Petitioners' belief that even if Petitioners did know where the prescribed regulations by the Secretary could be found in the Code, none could legally require the filing of a return for a tax for which no "liability" was ever manufactured by the Congress.

In the case **Mitchell vs. W.T.Grant,** 332 U.S. 380, (1947); the Supreme Court of the United States stated:

"Whatever the form in which the government functions, anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority."

Then Notice 555 (Rev. 4-84) referred to by Respondent in paragraph two of his letter to Petitioners, dated, April 17, 1994, alleges that 26 U.S.C. 6012 legally required Petitioners to file a U.S. Individual Income Tax Return.

The title of Section 26 U.S.C. 6012 is "Persons Required to Make Returns of Income" This obviously applies only to those taxpayers who have voluntarily taken advantage of the privilege of earning income, as offered by the Congress; and , after making the decision to take advantage of the privilege of earning income, those taxpayers have decided to prepare, process, and file a Form 1040, which will contain those taxpayer's voluntary self-assessment, which is used by those taxpayers to determine what the taxpayer's

obligation is to the Central Government for taking advantage of the privilege. Once a taxpayer has made the decision to take advantage of the "privilege," that is offered by the Congress of the Central Government for the Federal-Republic then 26 U.S.C. 6012 would apply because the taxpayer has manufactured a requirement upon himself to make a return.

Of course, the Respondent subscribes to the compulsory "I.R.S.-Plan.," Under this Income Tax System what the Respondent alleges in their letter to the Petitioners, dated, April 17, 1994, is accurate, however, this system advocated by the Respondent violates the "C-Plan."

EXAMPLE NUMBER TWO

On April 14, 1993, Petitioners received a "Notice of Deficiency," for tax year 1989. Petitioners noted that the "Notice of Deficiency," for tax year 1989 was based upon a "Substitute Form 1040," which was manufactured by Respondent.

Petitioners need to know by what legal authority did Robert D.Ah Nee, Director of the Austin Compliance Center of Respondents, Austin, Texas Service enter proceed and produce and issue a "Notice of Deficiency," on April 14, 1993, to Petitioners for tax year 1989? Further, Petitioners need to know by what legal authority did Revenue Agent Glen Larkin proceed to prepare, process, and produce a "Substitute Form 1040," allegedly in behalf of Petitioners without their knowledge, agreement, or permission?

Petitioners state, the Petitioners do not allege, that Revenue Agent Glen Larkin did not possess the legal authority to prepare, process, and file a "Substitute Form 1040," for tax year 1989, in behalf of Petitioners without there tacit permission, nor did Director Robert D. Ah Nee possess the legal authority to issue a "Notice of Deficiency," to the Petitioners on April 14, 1993, for tax year 1989

and for that matter any subsequent or previous date for the following legal and valid reasons:

Because of the "C-Plan," there is no provision within the entire Internal Revenue Code, Title 26, that **REQUIRES** anyone to file or pay taxes on "incomes." The tax on "incomes" is unlike any other revenue tax law; it is strictly a "Voluntary" tax. This is admitted in twenty-nine different places within the Respondent's Rules and Regulations Handbooks, Manuals, and Booklets. It has been expounded as a truism by every Internal Revenue Commission since the end of World War II. It has also been admitted and attested to as a fact of law by the United States Supreme Court in the case **Flora vs. United States,** 362 U.S. 145, 176 (1960).

The phrase "Voluntary Compliance" can only mean, when you consider the overall scheme, design, and purpose of the law that taxes incomes as enacted by the Congress, that compliance with "income tax laws" is voluntary and that the taxpayer voluntarily chooses and decides whether or not to comply based upon the " privilege' extended to the taxpayer by the Central Government of earning an "income," a "profit," a "gain." (**Brusahabor,** 240 U.S. 1, (1916); **Sims vs. Ahrems,** 271 Southwest, 720, 730 (1925).

Unless a taxpayer "voluntarily" elects to self-assess his income, because he took advantage of the Excise Tax's offered "privilege" the Central Government has no statutory authority to make an assessment for tax purposes for anyone at anytime on its own initiative. Further, without such a "Voluntary Self-Assessment," from the taxpayer, no income tax, by law, can be legally owed by the taxpayer to the Central Government. The Respondent's Publication 21, clearly states that the taxpayer must decide whether or not to become subject to the tax on incomes for it reads as follows:

"It is to be especially noted, neither the Internal Revenue Service nor the Courts can decide what is legally owed;. Only the individual taxpayer can make the decision for self-assessment."

Pursuant to 26 U.S.C. 6201, before a "deficiency assessment," can be legally manufactured by the Central Government, an " original assessment," on Form 1040 which was voluntarily manufactured by the taxpayer would have had to have been filed by the taxpayer.

Revenue Agent Glen Larkin, using as his authority 26 U.S. C. 6020 (a)(b)(1), 26 U.S.C 6001, 26 U.S.C. 6011, and 26 U.S. C. 6012(a), proceeded to manufacture a "Substitute Form 1040," dated, April 14, 1993, allegedly in behalf of the Petitioners for tax year 1989, without Petitioners knowledge or permission; which "Substitute Form 1040," became the bases for the Respondent to issue the "Notice of Deficiency," dated, April 14, 1993.

Twenty-Six U.S.C. 6001 and 26 U.S. C.6011 and 26 U.S.C. 6012(a) are usually cited by the Respondent within the Privacy Act and Paperwork Reduction Act Notice as the Respondent's legal right to demand information from the taxpayer. The Respondent states in that Notice that the taxpayer must file a return or statement with them for any tax year the taxpayer is liable for. The Respondents add, the taxpayers response is mandatory under these sections of the Internal Revenue Code. Of course the Respondent is subscribing to the compulsory "I.R.S.-Plan." This 'Plan' depends upon coercion, compulsion, and absolute obedience to demands. The words "mandatory" and "must" are constantly used by this compulsory "I.R.S.-Plan."

Analysis reveals a different story. Twenty-Six U.S.C. 6001 and 26 U.S.C. 6011 do not give to the Respondent the right to demand that a taxpayer must file a return. The Congressional Plan,

the "C-Plan," clearly does not require any taxpayer to file a tax return.

Twenty-six U.S.C. 6001 begins by saying that, "Every person liable. . . ." "Who is Person Liable?" Twenty-six U.S.C. 6011, in the very first sentence states. . ."any person made liable." Neither 26 U.S.C. 60-01 or 6011 states that anyone must file, is required, to file a return or list, and further, neither citation even mentions "income taxes." So how can the Respondent claim that these sections, within the law, "requires," or "say" anything about filing, income tax returns-or indeed, that they even pertain to Title 26 U. S. C. 1, Income Taxes.

The "C-Plan," is contained at 26 U.S.C. 1. Nowhere in sections 6001 and 6011 does it state that, "The taxes imposed by Section 1 shall be . . .paid on the basis of a return." It is perfectly obvious to the Petitioners and to anyone who can read, that Code sections 6001 and 6011 have absolutely nothing to do with income taxes contrary to what the Respondent declares, states, and claims. In fact, 26 U.S.C. 6011, states that it only applies when persons are "required" to make "returns or statement." pursuant to certain "regulations prescribed by the Secretary." It is to be noted that 26 U.S.C. 6011 does not identify any of those regulations with a cross reference. So how could anyone know whether these regulations applied to 26 U.S.C. 1?

The title of 26 U.S.C. 6012 is "Persons Required to Make Returns of Income." Under the "C-Plan," the "Persons Required to Make Returns of Income" are those that have "voluntarily self-assessed," because they took advantage of the privilege of the Central Government's Excise of earning "income." No one else is made legally liable by the "C-Plan.

Twenty-Six U.S.C. 6020 is the statute that Respondent claims allows them to manufacture a "Substitute Form 1040," for

the taxpayers. Under the "C-Plan," this is a false claim for two very good reasons:

Reason One: 26 U.S.C.6020(a) states as follows: ". . .If any person shall fail to make a return **REQUIRED** by this title. . ." Under the "C-Plan," Income Tax Returns are **NOT REQUIRED**;

Reason Two: Income tax returns must be subscribed to (signed at the Jurat), as stated in subsection 26 U.S.C. 6020(b)(2) and contain "information" from which a tax can be calculated--attributes that none of the "Substitute Form 1040's possess.(**Hartman vs. Commissioner,** 65 Tax Court 542 (1975; **Phillips vs. C.I.R.,** 28 Tax Court, 433, (1986).

The unsigned "Substitute Form 1040," prepared by Revenue Agent Glen Larkin, Austin, Texas, on April 14, 1993, is meaningless and can serve no legal purpose according to the "C-Plan." The "Substitute Form 1040" prepared by Revenue Agent Glen Larkin violated 26 U.S.C. 6020(a)(b)(2) and 26 U.S.C. 6201(a)(1). (**Hartman vs. Commissioner,**65 Tax Court, 532 (1975).

Since there has been no valid determination of a deficiency for tax year 1989, and because further, there was no return filed by the Petitioners, as alleged by Respondent when Respondent proceeded to illegally and unlawfully penalize Petitioners for filing a "Fifth Amendment Return," using the authority of 26 U.S.C. 6702(1)(A)(B)(2)(A)(B) for tax year 1989, and which penalty sum of $500.00 was paid by Petitioners as demanded, no income tax deficiency could legally exist.

Twenty-six U.S.C. 6211, contains the definition of a "deficiency" as it is known to Petitioners. A "deficiency assessment," made pursuant to 26 U.S.C 6211, is a "supplemental assessment," as provided for in 26 U.S.C. 6204. A "deficiency assessment" can only be manufactured by the Respondent to correct an "original assessment" that is defective, deficient.

Since, in the Petitioners' case, no original assessment was ever manufactured by the Petitioners for tax year 1989 (an original assessment is manufactured when the taxpayer prepares, processes, and files Form 1040 with numbers and figures upon the Form which has been calculated and derived by the taxpayer voluntarily because the taxpayer took advantage of the "privilege.") the claim of a "deficiency" is totally unacceptable and unwarranted and illegal because it is repugnant to the letter and spirit of the law that taxes incomes as enacted by the Congress of the Central Government for the Federal-Republic.

The Respondent's "Notice of Deficiency," strikes at the hear of the overall scheme, design, and purpose contained in the "C-Plan" that taxes incomes and it violates 26 U.S.C. 6404(a)(1)(3)(C)(1)(A)(B)(f).

The Petitioners logically would ask; "Have the Petitioners been assessed?" and if so, "By Whom?" and "Under what authority was the assessment manufactured?" and finally, "Where is the valid, legal "assessment Certificate," which is required by law, if an assessment has been manufactured?" If the law **REQUIRES**, and the law does, that an assessment is first to be manufactured by the taxpayer, then, and only then, may a supplemental assessment" be manufactured by an assessment officer, who would sign the summary record of assessment, making it an official "supplemental assessment."

It is important to point out that the purpose of an assessment is to record what somebody legally owes by way of taxes. Neither the Respondent nor the Courts are free to make presumptions, assumptions, and suppositions as to what taxpayers show or don't show on their returns.(**Federal Rules of Evidence,** 301-302.

The dates on which "supplemental or additional assessments," are manufactured by Respondent or the Courts, and any payments, which are subsequently made by the taxpayer based on the "supplemental or additional assessments," must be in evidence in order to show that the "supplemental or additional assessments," were manufactured by the Respondent or the Courts, after and subsequent to, the preparation, processing, and filing of the "original assessment," manufactured by the taxpayer on Form 1040.

When Respondent issued its "Notice of Deficiency," dated. April 14, 1993, it manufactured an "original assessment," not a "supplemental assessment," on its own initiative. Of course this is what you would expect because the Respondent has selected to ignore the "C-Plan" that taxes incomes and instead has produced its own law that taxes incomes, the compulsory, "I.R.S.-Plan." By issuing this "Notice of Deficiency," to the Petitioners, on April 14, 1993, the Respondent was demonstrating their utter contempt and disregard of the "C-Plan."

The "Notice of Deficiency," dated, April 14, 1993, manufactured by Respondent is "defective" in still another way.

On the first page of the "Notice of Deficiency" is a five column section entitled, "Additions to Tax, I.R.C. Section.,

It is to be especially noted that code citations are shown over the last two columns only. These code citations which are cited are 6651 (a)(1) and 6654(a). These apply to alleged penalties owed by the Petitioners to the Central Government as reported by Respondent. As usual, these penalties are absolutely false and baseless in the law that taxes incomes, as enacted by the Central Government for the Federal-Republic.

Examination of 6651(a) reveals that the title of the Section is "Failure to file a Tax Return or to Pay tax." This section, in the Internal Revenue Code, states that a penalty can be imposed when a taxpayer fails to file any **REQUIRED RETURN.** Petitioners state that this could not and does not apply to them because, under Title 26, which pertains to the tax on incomes, no taxpayer is **"REQUIRED TO FILE A RETURN."** This penalty may be imposed on other tax laws that are found in the Code where it is specifically stated that a return is required, but not of 26 U.S.C. I.

The other section in the Code cited is 6654 and it is entitled; "Failure by Individual to Pay Estimated Income Taxes." Petitioners state, in accordance the "C-Plan," they have not **"Voluntarily self-assessed for tax year 1989."** Under the circumstances, how can a penalty be assessed against the Petitioners for underpayment of an estimated tax when it is known that the Respondent is legally barred by statute from assessing a deficiency without first having a "Voluntary Self-Assessment.," manufactured by the taxpayer.

What is far worse than the alleged, bogus penalties that were assessed illegally by the Respondent on his "Notice of Deficiency," dated, April 14, 1993, is the fact that no Code Citation was cited by the Respondent that made the Petitioners "liable" for the alleged underlying tax upon which calculations the Petitioners were penalized by the Respondent.

The inclusion in the Internal Revenue Service's, "Notice of Deficiency," of Code Citations that authorized bogus penalties was clearly stated, however, the section upon which the alleged bogus penalties were based, which was the alleged underlying tax that was alleged to be owed by Petitioners, has no Code Citation. This of course represents irrefutable evidence that there is no citation in the Code that could be cited which covered and formed the basis for such an allegation by the Respondent. This is proof positive that on its face Petitioners are not "liable" under the Code unless

Petitioners Voluntarily Self-Assess in accordance to the "C-Plan," and take advantage of the Central Government's "privilege" of earning income.

The only way that the Respondent could proceed to issue a "Notice of Deficiency,"as was done in this case, would be for the Respondent to insist that the compulsory, "I.R.S.-Plan" be adhered to by the Petitioners. By itself, this makes the "Notice of Deficiency," dated, April 14, 1993, manufactured by the Respondent, null and void because no section in the Code makes Petitioners "liable" for the alleged tax that is alleged to be due and payable. Besides, unless Petitioners are given specifics in regards to their alleged infringements on the law that taxes incomes, they cannot know what they are guilty of doing wrong and consequently are being denied the "right" of self-defense. If, for no other reason, the Respondent's "Notice of Deficiency" constitutes a denial of specifics and clearly violates the "Due Process of Law" standard as stated at the Fifth Amendment to the Constitution of the United States. The Respondent's, "Notice of Deficiency," did not, could not allege that the Petitioners were guilty of any offense perpetrated against the law that taxes incomes since the Respondent did not cite the law that allegedly **REQUIRED** Petitioners to file the income tax returns Petitioners are charged with not filing. Further, apparently, no Code violations by the Petitioners could be cited by the Respondent in regards to **REQUIRED LIABILITY** because no "voluntary self-assessment" for tax year 1989 had been manufactured by Petitioners. So, how can Petitioners defend themselves and combat something that doesn't really exist.

In summary, the instant the Respondent prepared and filed a "Substitute Form 1040" allegedly in behalf of Petitioners without their tacit agreement, the law was transformed and converted from that of being a "Voluntary, Non-Compulsory, Indirect, Privileged, Excise Tax on Incomes, which is subjected to the Constitutional Rule of Uniformity" to that of a "Compulsory, Non-Voluntary,

Direct, Tax on Incomes, which is not subjected to the Constitutional Rule of Apportionment." If this action by Respondent is sanctioned and approved ,and not challenged ,it would mean that the United States Constitution doesn't exist any longer as the Supreme Law of the Land; it would also mean that the United States Supreme Court's findings, rulings, interpretations, and decisions rendered on the subject for over 80 years would become meaningless; and it would finally mean that we would have come full circle, that is we would be right back to where we were before the American Revolutionary War was fought when "taxation without representation" was the rule of the day. Incidentally, it would also mean that the "separation of powers," that our Forefathers worked so hard to incorporate in the Constitution would be shattered and destroyed because the Executive Branch of Government, with the help of the lower courts in the Federal Judiciary, would have assumed by usurpation the exclusive power of the Legislative Branch of Government to manufacture law.

CONCLUSION

It is imperative that something be done about the situation that has been manufactured by the acts and actions of the Respondent, the United States District Court for the Western District of Texas, San Antonio Division, The United States Tax Court, and the United States Court of Appeals For the Fifth Circuit. These agencies of the Central Government in File No. SA 93 CA 0391, Docket No. 14176-93, Docket No. 93-5601, and Docket No. 93-8805 have, through their findings, rulings, interpretations, and decisions have perpetrated an injustice on Petitioners by converting the law that taxes incomes from being a "Voluntary, Non-Compulsory, Indirect, Privileged, Excise Tax on Incomes, which is subjected to the Constitutional Rule of Uniformity," as enacted by the Congress for the Central Government of the Federal-Republic for the Fifty, Independent, Sovereign, United, States, and as allowed by the Constitution of the United States, and as approved

by 80 years of findings, rulings, interpretations, and decisions by the United States Supreme Court, to that of a "Compulsory, Non-Voluntary, Direct Income Tax , which is not subjected to the Constitutional Rule of Apportionment." Because of this usurpation and conversion of the law that taxes incomes by the Respondent and the Respondent's allies and accessories, the taxpayers of this Nation are experiencing massive amounts of confusion, doubt ,uncertainty and insecurity which will lead eventually to a radical conclusion. unless a ruling is made by the United States Supreme Court which leaves no doubt that the income tax system that will prevail in this Nation is the one manufactured by the Congress of the Central Government for the Federal-Republic of the Fifty, Independent, Sovereign, United, States.

RESPECTFULLY SUBMITTED.

Maurice H. Sochia
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210-494-2912

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APPENDIX

APPENDIX "A"

United States Court of Appeals
Fifth Circuit
Office of the Clerk

June 24, 1994

Mr. Maurice H., Sochia
Ms. Beatrice M. Sochia
17017 Klier Oak Lane
San Antonio, Texas 78232

No. 93-5601- Sochia vs. C.I.R.
No. 93-8805-Sochia vs. U.S.A., Et. Al.

Enclosed is a copy of the court's decision. A judgment has been entered pursuant to Rule 36 of the Federal Rules of Appellate Procedure (FRAP). (The opinion may contain typographical or printing errors. If you discover an apparent mistake, please contact the Clerk"s Office at (504) 589-2570.)

Rules 39, 40 and 41, FRAP and Local Rules 39 and 41 govern costs, petitions for rehearing and mandates. A petition for rehearing must be filed in the Clerk's Office within fourteen (14) days from this date. Placing the petition in the mail on the 14th day will not suffice.

If you were unsuccessful in the district court and on appeal, and will be considering filing a petition for certiorari in the Supreme Court, there is no need to file a motion for stay of mandate under

FRAP 41, since issuance of the mandate does not affect the time or the right to file such a petition.

The judgment entered provides that Maurice H. and Beatrice M. Sochia pay double costs in these appeals, plus the sum of $500.00 in damages in each appeal.

Yery truly yours,

Charles R. Fulbruge III, Clerk

By: Yolanda M. Jett
Deputy Clerk

Enclosure:

C.C. Mr. Gary R. Allen
Ms. Sally J. Schornstheimer
Mr. Richard Farber
Mr. Robert L. Baker

SOCHIA VS. C.I.R.

Maurice H. Sochia and Beatrice M. Sochia,
Petitioners-Appellants,

vs.

Commissioner of Internal Revenue,
Respondent-Appellee.

Maurice H. Sochia and Beatrice M. Sochia,
Plaintiffs-Appellants,

vs.

United States of America, et al.,
Defendants-Appellees.

Nos. 93-5601, 93-8805
Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

June 24, 1994.

Taxpayers appealed from decision of the Tax Court dismissing their suit seeking redetermination of federal income tax deficiency and additions to tax determined by the Commissioner of Internal Revenue. Taxpayers also appealed from order of the United States District court for the Western District of Texas, Edward C. Prado, J., granting summary judgment to the government and dismissing their action seeking refund of $500.00 penalty imposed for filing frivolous tax return. After consolidation

of the appeals, the Court of Appeals, Politz, Chief Judge, held that: (1) allegations in petition seeking redetermination of tax deficiency and additions to tax failed to state a claim upon which relief could be granted; (2) protest income tax return filled with blanket Fifth Amendment objections warranted frivolous return penalty'; and (3) appeals which challenged Sixteenth Amendment and income tax legislation were frivolous and warrnatred sanctions.

Affirmed.

1. Internal Revenue Regulation 4938

Allegations of taxpayers seeking redetermination of federal income tax deficiency and additions to tax failed to state a claim upon which relief could be granted; taxpayers alleged in petition that a "Fifth Amendment Return" is a valid, legal, legitimate, proper, and correct tax return, that they filed such return in good faith, and that being citizens of the State of Texas, they were not subjected to jurisdiction of the Internal Revenue Code. Tax Court Rule 34(b), 26 U.S.C.A. foll. Section 7453.

2. Internal Revenue Regulation 4616.1

Deficiency determinations of the Commissioner of Internal Revenue enjoy presumption of correctness, and burden of proof rests upon taxpayer to demonstrate error.

3. Internal Revenue Regulation 5217.25

Income tax return was frivolous, warranting assessment of $500.00 penalty, where taxpayers supplied only their names and those of their dependent children, address, signatures, and amount of federal tax withheld, but failed to provide any information about their income and expenses; instead, they inserted

phrase "Object-5th Amend." on each line of Form l040 that called for specific financial information. 26 U.S..C.A. 6702.

4. Federal Civil Procedure Regulation 284l

Frivolous appeals based on challenges to the Sixteenth Amendment and the income tax legislation warranted sanctions of double costs plus sum of $500.00 in damages, for total of $l,000.00 payable to the Treasury of the United States. U.S.C.A. Const. Amend. l6; F.R.A.P.Rule 38, 28 U.S.C.A.

Appeal from the Decision of the United States Tax Court.

Appeal from the United States District Court for the Western District of Texas

Before Politz, Chief Judge, Jolly and Duhe, Circuit Judges.

Politz, Chief Judge:

These two appeals are consolidated for today's disposition. In docket number 93-5601, Maurice H. and Beatrice M. Sochia appeal the decision of the tax court dismissing their action and affirming the Commissioner's determination of a tax deficiency and additions thereto. In docket number 93-8805 the Sochias appeal the summary judgment dismissal by the district court of their action seeking a refund of a $500.00 penallty imposed for filing a frivolous tax return. For the reasons assigned we affirm the Tax Court and districtcourt in the actions appealed, and impose sanctions for these patently frivolous appeals.

1. The Sochias' federal court action sought the following:

(1) a statement from defendants that there is such a thing as a "Fifth Amendment Right;"

(2) a statement from defendants that there is such a thing as a "Fifth Amendment Return;"

(3) a statement from defendants that a "Fifth Amendment Return" is not a frivolous return because a "Fifth Amendment Return" must be examined and analyzed under standard Constiutional Law and not Tax law;

(4) a statement from defendants that the "Fifth Amendment Right" may be invoked by both the guilty individual and the innocent individual;

(5) a statement claiming that the United States Constitution is still the Supreme Law of the Land;

(6) a statement that a person claiming the "Fifth Amendment Right" does not need to demonstrate how a particular question could incriminate that person;

(7) a statement that statutory and administrtative law must not violate the Constitution;

(8) a permanent injunction;

(9) actual, special, and punitive damages; and

(l0) costs.

Background

On their 1989 federal income tax return, the Sochias supplied only their names and those of their dependent children,

address, signatures, and amount of federal tax withheld. They failed to provide any information about their income and expenses. Instead, they inserted the phrase "Object-5th Amend." on each line of the Form 1040 that called for specific financial information. The Internal Revenue Service assessed taxes at $16,013.00 imposed $2,793.00 and $720.00 as additions to the tax for failure to file a return and for failure to pay estimated taxes respectively, and penalized the Sochias $500.00 under 26 U.S.C. 6702 for the filing of a frivolous return.

The Sochias filed suit in the Tax Court seeking a redetermination of the federal income tax deficiency and additions to tax determined by the Commissioner. After the Sochias refused to follow the court's order directing an amendment of their pleadings. the Tax Court dismissed for failure to state a claim upon which relief could be granted and sustained the Commissioner's determination of the deficiency and additions thereto. The Sochias timely appealed.

The Sochias also filed a complaint seeing the refund of a $500.00 penalty assessed against them for filing a frivolous tax return for 1989.1 The IRS moved for summary judgment; the magistrate judge recommended granting the summary judgment. Over the objections of the Sochias the district court adopted that recommendation. The Sochias timely appealed. We consolidated the two appeals.

Analysis

A. Tax deficiency and additions to tax.

Relying upon the Federalist Papers and invoking natural law, the Sochias allege in their pro se petition to the Tax Court that a "Fifth Amendment Return" is a valid, legal, legitimate, proper, and correct tax return, that they had filed the "Fifth Amendment

Return" in good faith, that the Commissioner wrongfully ignored their "Fifth Amendment Return" and issued notice of deficiency in violation of their due process rights, and that "being State Citizens of the sovereign State of Texas, they were not subjected to the jurisdiction of the Internal Revenue Code produced by the United States Congress, and therefore. . . .could not legally report on Form 1040. . . what the Commissioner had alleged is 'Income.'" The Commissioner moved to dismiss the petition for failure to state a claim upon which relief can be granted under Rule 34(b)(4) of the Rules of Practice and Procedure of the United States Tax Court for failure to set forth justiciable allegations of error and, under Rule 34(b)(5) for failure to allege any facts in support of such allegations. The Tax Court ordered the Sochias to file an amended petition setting forth with specificity each claimed error of the Commissioner and a specification of the facts upon which they based each claim of error. The Sochias, however, responded to the court order contending that the facts set forth in their petition were sufficient to satisfy the Tax Court's rules and they reiterated the contentions set forth in their petition.

(1, 2) The Tax Court held a hearing on the Commissioner's motion to dismiss; the Sochias opted not to attend. Following the hearing the Tax Court issued an order of dismissal and decision affirming the Commissioner's assessment of deficiency and additions to tax. The Tax Court concluded that the Sochias failed to allege any justiciable error in the determinations upon which the notice of deficiency was based or any facts tending to support any such error. We agree. Deficiency determinations of the Commissioner enjoy a presumption of correctness; the burden of proof rests upon the taxpayer to demonstrate error.2 The pleadings by the Sochias clearly fail to satisfy the requirements of Tax Court Rule 34(b). The remaining issues raised by the Sochias on appeal from the Tax Court decision totally lack merit and require no comment. That decision is affirmed in all respects.

2. **Sandvall vs. C.I.R.**, 898 F. 2d. 455 (5th. Cir. 1990).

B. Frivolous filing penalty

(3) The Commissioner assessed a $500.00 frivolous return penalty under 26 U.S.C. 6702 for the filing of the 1989 tax return. The Sochias filed a **pro se** complaint seeking a refund, claiming that in declaring their return frivolous the Commissioner violated their fifth amendment rights. Under section 6702, the IRS may impose a $500.00 penalty on any individual filing what purports to be a tax return when the filing (1) does not contain information on which the substantial correctness of the self-assessment may be judged, and (2) is based on a frivolous position.3 We have upheld penalty assessments for "protest returns" filed with blanket fifth amendment objections. 4 Further, the Sochias' challenge to the validity of the sixteenth amendment has been rejected repeatedly by the courts.5 We now uphold the penalty assessed under section 6702. 6

3. **Mosher vs. I.R.S.,** 775 F. 2d. 1292 (5th Cir. 1985), cert. denied. 475 U.S. 1123, 106 S. Ct. 1645, 90 L. Ed. 2d. 189 (1986).

4. See **Parker vs. C. I. R.,** 724 F. 2d. 469 (5th Cir. 1984) (Penalty under 26 U.S.C. 6653(a)).

5. See **Knoblauch vs. C.I.R.**, 749 F. 2d. 200 (1984), cert. denied, 474 U.S. 830, 106 S.Ct. 95, 88 L. Ed. 2d 78 (1985) noting that every court that has considered this argument has rejected it).

6. See **Miller vs. United States,** 868 F. 2d. 236 (7th Cir., 1989).

C. Sanctions

(4) The government seeks sanctions for frivolous appeals, underscoring the waste of time and effort by the judicial officers and support personnel and by staff and counsel for the government in response to these appeals. We find the government's argument persuasive. More than a decade ago,7 we repeated a warning given three years before 8 that frivolous challenges to the sixteenth amendment and income tax legislation and regulations would result in the imposition of the full range of sanctions provided by Rule 38 of the Federal Rules of Appellate Procedure. Apparently our caution has gone unheeded. Sanctions are warranted herein. We therefore impose upon Maurice H. Sochia and Beatrice M. Sochia double costs in these appeals plus the sum of $500.00 in damages in each appeal, this total of $l,000.00 being payable to the Treasury of the United States.

The judgments challenged in these consolidated appeals are affirmed in all respects.

7. **Parker vs. C.I.R.**

8. **Lonsdale vs. C.I.R.,** 66l F. 2d. 7l (5th. Cir., 198l).

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 93-5601

(U.S. Court of Appeals, Filed August 3, 1994, Charles R. Fulbruge III, Clerk)

MAURICE H. SOCHIA AND BEATRICE M. SOCHIA
PETITIONERS-APPELLANTS,

VERSUS

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT-APPELLEE.

Appeal from a Decision of the United States Tax Court

No. 93-8805

MAURICE H. AND BEATRICE M. SOCHIA,
PLAINTIFFS-APPELLANTS,

VERSUS

UNITED STATES OF AMERICA, ET AL.,
DEFENDANTS-APPELLEES.

Appeal from the United States District Court for the Western District of Texas

ON PETITION FOR REHEARING

(August 3, 1994)

Before Politz, Chief Judge, Jolly and Duhe, Circuit Judges.

PER CURIAM:

It is ordered that the petition for rehearing filed in the above case is denied.

ENTERED FOR THE COURT:

Henry A., Politz
United States Circuit Judge

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Clerk's Note;
See FRAP and Local Rules 41 for stay of the mandate.

APPENDIX "C"

UNITED STATES TAX COURT
WASHINGTON, D. C., 20217

Maurice H. and Beatrice M. Sochia,	)	
Petitioners,	)	
	)	
versus	)	Docket No.
	)	14176-93
Commissioner of Internal Revenue	)	
Respondent	)	

ORDER OF DISMISSAL AND DECISION

This matter is before the Court on respondent's motion to dismiss for failur to state a claim upon which relief can be granted filed August 23, 1934. The pertinent facts are summarized below: 1

On or abourt April 8, 1990, Maurice H. Sochia and Beatrice M. Sochia (petitioners) filed a tax return for the 1989 taxable year. Other than computing their personal exemptions amounts and reporting $4,842.56 in Federal Tax Withholding, petitioners completed the return by inserting the words "Object-5th. Amend." where information pertinent to the determination of their tax liability was requested.

On April 14, 1993, respondent issued a notice of deficiency to petitioners determining a deficiency in and additions to their Federal Income Tax for the 1989 taxable year as follows:

	Additions to Tax	
Deficiency	Sec. 6651(a)	Sec. 6654
$16,013.00	$ 2,793.00	$ 720.00

1 All section references are to the Internal Revenue Code, as amended. Rule references are to the Tax Court Rules of Practice and Procedure.

Petitioners filed a petition for redetermination on July 6, 1993. 2

2 At the time the petition was filed, petitioners resided in San Antonio, Texas.

The petition includes allegations that: (1) Respondent wrongfully ignored petitioners' "Fifth Amendment Return;" (2) respondent issued the deficiency notice in violation of petitioners' due process rights'; (3) respondent wrongfully determined that petitioners earned wage income in the amount of $42,948.00; and (4) as citizens of the sovereign State of Texas they are not subject to the jurisdiction of the Internal Revenue Code.

As indicated, respondent filed a motion to dismiss the petition for failure to state a claim upon which relief can be granted. By order dated August 25, 1993, petitioners were directed to file by September 23, 1993, a proper amended petition setting forth with specificity each error allegedly made by respondent in the determination of the deficiency and separate statements of every fact upon which the assignments of error are based.

On September 2, 1993, petitioners filed a response to respondent's motion to dismiss. Petitioners assert that the facts set forth in their petition are sufficient to satisfy this Court's Rules concedrning pleadings. Further, petitioners assert that they do not understand the concepts of income and gross income.

A hearing on respondent's motion to dismiss was held in Washington, D.C., on September 29, 1993. Counsel for respondent appeared at the hearing and presented argument on the motion. Petitioners did not appear at the hearing nor did they file a written statement in lieu of attendance at the hearing pursuant to Rule 50(c).

It is evident that the petition filed in this case does not comply with Rule 34. The Court's order dated August 25, 1993, provided petitioners an opportunity to allege specific facts concerning their liability for the taxable year in question. Petitioners failed to properly respond to the Court's order. Rather, petitioners elect to continue to proceed with time-worn tax protestor rhetoric. See **Abrams vs. Commissioner,** 82 Tax Court 403 (1984); **Rowlee vs. Commissioner,** 80 Tax Court 1111 (1983); **McCoy vs. Commissioner,** 76 Tax Court 1027 (1981), Affd., 696 F. 2d. 1234 (9th. Cir., 1983); **Karlin vs. Commissioner,** Tax Court Memo. 1990-496.

Our rules provide that failure of a petition to conform with the requirements set forth in Rule 34 may be grounds for dismissal. Rules 34(a)(1) and 123(b). Because petitioners failed to raise an argument on which relief may be granted in their petition and failed to file a proper amended petition, respondent's motion to dismiss will be granted.

Premises considered, it is

ORDERED: That respondent's motion to dismiss for failure to state a claim upon which relief can be granted, filed August 23, 1993, is granted and this case is hereby dismissed for failure to state a claim upon which relief can be granted. It is further

ORDERED AND DECIDED: That petitioners are liable for a deficiency in and additions to their Federal income tax for the 1989 taxable year as follows:

	Additons to Tax	
Deficiency	Sec. 6651(a)	Sec.6654
$16,013.00	$2,793.00	$ 720.00

(Signed) L. W. Hamblen, Jr.

L. W. Hamblen, Jr.
Chief Judge

Entered: October 12, 1993.

APPENDIX "D"

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Maurice H. Sochia and	)	
Beatrice M. Sochia	)	
Plaintiffs	)	
	)	Civil Action No.
vs.	)	SA-93-CA-391.
	)	
United States of America,	)	
Internal Revenue Service,	)	
Gary M. Doniger, and Robert	)	
D. Ah Nee	)	
Defendants	)	

ORDER

On this day the Court considered the Report and Recommendation of the United States Magistrate Judge, filed in the above styled and numbered case on September 30, 1993, and Plaintiff's objections thereto, filed on October 13, 1993.

I. Standard of Review:

Where no party has objected to a Magistrate Judge's Memorandum and Recommendation, the Court need not conduct a de novo review of them. See 28 U.S.C. 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.") In such cases, the Court need only

review the Memorandum and Recommendation and determine whether they are either clearly erroneous or contrary to law. **United States vs. Wilson, 864 F. 2d 1219, 1221 (5th. Cir. 1989).**

On the other hand, any Memorandum or Recommendation that is objected to requires de novo review by the Court. Sucha review means that the Court will examine the entire record, and will make an independent assessment of the law. The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. **Battle vs. United States Parole Com., 834 F. 2d 419, 421 (5th.Cir., 1987).**

In this case the Court has conducted a de novo review of the Magistrate's Memorandum and Recommendation and finds that the Plaintiff's objections to the Magistrate's Recommendation are without merit.

II. Background:

Plaintiffs objected, on Fifth Amendment grounds, to almost every line of the IRS form 1040 they filed with Defendants for the 1989 tax year. Defendant , Internal Revenue Service ("IRS") penalized Plaintiffs $500.00 under 26 U.S.C. 6702 for filing a frivolous return. After exhausting their administrative remedies, Plaintiffs filed this law suit requesting (1) a statement from Defendants that there is such a thing as a "Fifth Amendment Right," (2) a statement for Defendants that there is such a thing as a "Fifth Amendment Return," (3) a statement from Defendants that a Fifth Amendment Return is not a frivolous return because a Fifth Amendment Return must be examined and analyzed under standard Constitutional Law and not Tax Law, (4) a statement from Defendants that the "Fifth Amendment Right" may be invoked by both the guilty individual and the innocent individual, (5) a statement claiming that the United States Constiution is still the Supreme Law of the Land, (6) a statement that a person claiming

the "Fifth Amendment Right" does not need to demonstrate how a particular question could incriminate that person, (7) a statement that statutory and administrative law must not violate the Constitution, (8) a permanent injunction, (9) actual, special, and punitive damages, and (10 costs. For the reasons set out below, the Court accepts the recommendation of the Magistrate Judge.

III. Discussion:

According to the allegations of Plaintiffs' complaint, Defendants violated Plaintiffs' Fifth Amendment Rights by declaring their 1989 tax return frivolous under 26 U.S.C. 6702. All too familiar with this argument, federal courts have universally rejected it. See **e.g., Mosher vs. IRS,** 775 F. 2d. 1292 (5th. Cir., 1985), **cert. denied,** 475 U.S. 1123 (1986); **Eicher vs. United States,** 774 F. 2d. 27 (1st. Cir., 1985); **Ricket vs. United States,** 773 F. 2d., 1214 (11th. Cir., 1985); **Peoples vs. Commissioner,** 771 F. 2d. 77 (4th. Cir., 1985); **Hudson vs. United States,** 766 F. 2d., 1288 (9th. Cir., 1985); **Boomer vs. United States,** 755 F. 2d., 696 (8th. Cir., 1985); **Betz vs. United States,** 753 F. 2d. 834 (10th Cir. 1985). Tax protestors have thoroughly litigated the Fifth Amendment return argument without success and this Court finds the complaint of these Plaintiffs equally without merit.

On April 27, 1989, Plaintiffs were summoned by Defendants to appear for an audit. At the audit, Plaintiffs posed fifteen questions to the IRS agent. When Plaintiffs introduced these questions, the audit was terminated. Plaintiffs' complaint contains the fifteen questions presented to the IRS agent along with Plaintiffs' version of the correct answers. The Magistrate Judge did not address Plaintiffs' fifteen questions in his recommendation to this Court. Although the dispostion of the case does not require consideration of Plaintiffs' questions, this Court will briefly try to answer them because the Plaintiffs apparently feel that the answers

to these questions demonstrate why they should prevail. The Court answers Plaintiffs' fifteen questions as follows:

1. The Sixteenth Amendment was properly ratified. (See **Knoblauch vs. Commissioner,** 749 F. 2d. 200 (5tgh Cir. 1984), **cert. denied,** 477 U.S. 380 (1985).

2. The Sixteenth Amendment did not authorize Congress to pass into law any type of tax. Congress already possessed the unquestioned authority to authorize income taxes in a generic sense prior to the adoption of the Sixteenth Amendment. **Brushabor vs. Union Pacific Railroad Company,** 240 U.S. 1, 17-18, 36 S. Ct. 236, 241 (1916). The authority conferred upon Congress by Section 8, Article I "to lay and collect taxes, duties, imposts, and excises" is exhaustive and embraces every conceivable power of taxation. **Id.** at 12, 36 S. Ct. at 239. The amendment merely eliminates the requiremnt that the direct income tax be apportioned among the states. **Parker vs. Commissioner,** 724 F. 2d. 469, 471 (5th. Cir. 1984).

3. "Ordinary income" is defined at 26 U.S.C. 64. "Gross income" is defined at 26 U.S.C. 61.

4. The rules of apportionment and the rule of uniformity are still in effect. A non-apportioned direct tax which is not an income tax is still unconstitutional. **Commissioner vs. Obear-Nester Glass Co.,** 217 F. 2d. 56 (7th. Cir., 1954), **cert. denied,** 348 U.S. 982 (1955). But a non-apportioned direct income tax is constitutional under the Sixteenth Amendment.

5. The Sixteenth Amendment discusses taxation of income. Plaintiffs try to equate income with profit or gain, but the amendment does not mention profit or gain. All income, whether or not it is profit, derived from any source is subject to an unapportioned tax under the amendment.

6. The Court agrees with Plaintiffs on the correct functions of the various branches of government.

7. The Court agrees with Plaintiffs that the Treasury Department cannot make laws. However, Plaintiffs were penalized under 26 U.S.C. 6702, a law passed by the legislative branch, interpreted by the judicial branch, and enforced by the executive branch..

8. 26 U.S.C. 6012 is entitled "Persons required to make returns of income: (emphasis added). The word "required" indicates that filing a proper return is not optional. 26 U.S.C. 6651 addresses the results of a failure to pay tax. It is clear under this section that payment of taxes is not optional either.

9. Yes. 26 U.S.C. 6012.

10. The Internal Revenue Service"s interpretation of the tax laws do not always "square with" the interpretation of the federal courts. That is why taxpayers, and even those who do not pay their taxes, are able to resort to the courts if they cannot resolve their disputes with the IRS. As far as the filing of a Fifth Amendment Return goes however, the IRS and the federal courts are "synchronized." Finally, while the tax laws can be confusing; they are not unconstitutionally vague. **United States vs. Moore,** 692 F. 2d. 95 (10th. Cir. 1979).

11. The persons required to file tax returns are identified in 265 U.S.C.6012.

12. Plaintiffs acknowledge that all persons residing in the United States are subject to the federal tax laws. The term "United States" when used in a geographical sense includes the

States. 26 U.S.C. 7701(9). Plaintiff resides in the State of Texas and is therefore subject to the federal tax laws.

13. Has been answerd by 12.

14. Whether classified as a right or a privilege, the Fifth Amendment protection does not prohibit imposition of a penalty for filing of a frivolous return. See cases cited in main text above.

15. Misprision of treason is concealing or failing to disclose the commission of any treason against the United States by a person who has knowledge of the treason and owes allegiance to the United States. 26 U.S.C. 2382. (The Court notes that Plaintiffs have misquoted Section 2382 on page 20 of their complaint.) Plaintiffs have failed to allege any facts indicating that any IRS agent is guilty of this offense.

IV. Conclusion:

The Court finds that Plaintiffs' fifteen questions do not raise any issues requiring the Court to disregard the enormous body of law supporting Defendant's impostion of a penalty under 26 U.S.C. 6702. The Recommendation shall therefore be accepted pursuant to 28 U.S.C. 636(b)(1) such that Defendants' Motion for Summary Judgment is granted.

Accordingly, IT IS HEREBY ORDERED that the Recommendation of the United States Magistrate, filed in this case on Septembere 30, 1993 is ACCEPTED, such that Defendant's Motion for Summary Judgment is GRANTED.

SIGNED and ENTERED on this 27th of October, 1993.

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EDWARD C. PRADO
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Maurice H. Sochia and	)	
Beatrice M. Sochia	)	
Plaintiffs,	)	
	)	
versus	)	Civil Action No.
	)	SA-93-CA-391
United States of America,	)	
Internal Revenue Service,	)	
Gary M. Doniger, and	)	
Robert D. Ah Nee,	)	
Defendants	)	

JUDGMENT

On this date, the Court considered the Judgment to be entered in the above styled and numbered cause.

Pursuant to an Order of even date,

It is hereby ORDERED, ADJUDGED, and DECREED that the Memorandum and Recommendation of the United States Magistrate Judge, filed in this case on September 30, 1993, is ACCEPTED such that Defendant's Motion for Summary Judgment is GRANTED such that Plaintiffs take nothing;

It is further ORDERED, ADJUDGED, and DECREED that each side bear their own respective costs;

SIGNED and ENTERED on this 27th day of October, 1993.

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EDWARD C. PRADO
United States District Judge